

Law and Business Review of the Americas

Volume 18 | Number 2

Article 5

2012

Legal Framework of Foreign Investment in Chile

Rodrigo Polanco Lazo

Follow this and additional works at: <https://scholar.smu.edu/lbra>

Recommended Citation

Rodrigo Polanco Lazo, *Legal Framework of Foreign Investment in Chile*, 18 LAW & BUS. REV. AM. 203 (2012)
<https://scholar.smu.edu/lbra/vol18/iss2/5>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

LEGAL FRAMEWORK OF FOREIGN INVESTMENT IN CHILE

Rodrigo Polanco Lazo*

OUR authorities declare “that the capacity to attract foreign investment is essential to Chile’s economic growth and forms an integral part of its open trade policy.”¹ They also “believe[] that Chile’s comparative advantages for attracting foreign investment flows include a clear and stable legal framework free market policies and export led growth.”² The purpose of this article is to examine the former structure in order to determine its institutional performance, investment flows and domestic regulation in a time of crisis, if that crisis had an impact on macroeconomic adjustment, or what might happen if foreign investment flows are lowered or removed quickly.

The legal framework of foreign investment in Chile derives from several sources, including constitutional, legal, and international provisions.

I. CONSTITUTIONAL PRINCIPLES AND FOREIGN INVESTMENT

Article 19 of the Chilean Constitution (1980) guarantees a series of rights to “all persons.” This expression differs from that used in Article 10 of the previous Chilean Constitution of 1925, which mentioned the “inhabitants of the Republic” as subjects of rights enshrined therein.³

* Rodrigo Polanco is Director of International Relations at University of Chile, where he is in charge of academic relations with foreign universities and international organizations. He undertook a Master of Laws at University of Chile Law School and a LL.M. in International Legal Studies at New York University (NYU) School of Law. At University of Chile, he serves also as an Assistant Professor of International Economic Law, teaching Foreign Investment Law, International Trade Law, and International Environmental Law, both at the Faculty of Law and the Institute of International Studies. He is also a published scholar (“Foreign Investment: Legal Regime and Dispute Settlement”, co-author LexisNexis Chile) and legal practitioner for more than 14 years of experience in both public and private sectors, Rodrigo specializes in economic and international law, investment law air and space law and litigation. In 1998 he founded the Fiscalía del Medio Ambiente (FIMA) a non-profit that does pro bono work in public interest environmental cases before domestic and international tribunals, and he teaches environmental law to communities and members of the judiciary. He is also editor of environmental law journal *Justicia Ambiental*.

1. World Trade Organization Secretariat, *Trade Policy Review: Chile*, ¶ 21, WT/TPR/S/220 (Sept. 2, 2009).

2. *Id.*

3. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1925, art. 10.

This change is very important for foreign investors, because the word “person” includes both natural persons and legal entities, domiciled either inside or outside the territory of the Republic, as usually occurs with foreign investors.⁴

Within the Constitution there are a number of rights that directly or indirectly, regulate foreign investment in Chile. These provisions fall within what traditionally has been called by Chilean authors as “Public Economic Order” (“*Orden Público Económico*” or “OPE”) a doctrinal concept subject of heated debate among local scholars about its content and usefulness.⁵ Whatever the definition of public economic order we accept, the definition almost always includes the following rights related to foreign investment.

A. RECOGNITION OF INTERMEDIATE BODIES

As a basic principle, the Chilean State “recognizes and empowers the intermediate groups through which society organizes and structures itself and guarantees them adequate autonomy in order to [fulfill] their own specific objectives.”⁶ This is part of the essential recognition, protection and regulation of a company—as an intermediate group—by the State and a guarantee that it is obliged to ensure appropriate autonomy of the business organization to meet its own specific purposes.

As foreign investment is largely made through legal entities (i.e., foreign-controlled enterprises), this is a crucial provision to understand the role of Chilean State regarding regulation of rights and duties of foreign investors.

B. EQUALITY BEFORE THE LAW

Under Article 19, section 2, of the Constitution, in Chile there “are no privileged persons or groups,” and “[n]either the law nor any authority may establish arbitrary distinctions.”

This legal right prevents exceptions or arbitrary privileges to some, excluding others under similar circumstances. Regarding foreign investment, this basically implies the recognition of the principle of national treatment. “There is no reason for [the State and its agencies] to discriminate between local and foreign investors, and perhaps one of the most

4. CONSTITUCIONES POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 19, § 15 (amended 2005).

5. See, e.g., ARTURO FERNANDOIS VÖHRINGER, *DERECHO CONSTITUCIONAL ECONÓMICO, GARANTÍAS ECONÓMICAS, DOCTRINA Y JURISPRUDENCIA* (2d ed. 2006); VÍCTOR MANUEL & AVILÉS HERNÁNDEZ, *ORDEN PÚBLICO ECONÓMICO Y DERECHO PENAL* (1998); JOSÉ LUIS CEA EGAÑA, *TRATADO DE LA CONSTITUCIÓN DE 1980* (1988); PABLO RUIZ-TAGLE VIAL, *Principios Constitucionales del Estado Empresario*, 62 *REVISTA DE DERECHO PÚBLICO* 48 (2000) (Chile); ARTURO YRARRÁZAVAL C., *Orden Público Económico: Ficción o Realidad*, 15 *REVISTA DEL ABOGADO* 13 (1999).

6. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 1.

important rules is that foreigners should be treated as locals.”⁷ Moreover, equality between Chileans and foreigners is also enshrined in the Chilean Civil Code, which provides that the law does not make differences between Chileans and foreigners in relation to the acquisition and enjoyment of rights.⁸

C. FREEDOM OF ASSOCIATION⁹

In close connection with the aforementioned principles, is the recognition of the right to associate without prior authorization and to create legal entities under the law. As previously mentioned, this is important because such organizations are one of the most used vessels of foreign investment.

Several types of legal entities are available under Chilean law for the purpose of conducting business, being the Corporation (“Sociedad Anónima”) and the more commonly used Limited Liability Partnership (“Sociedad de Responsabilidad Limitada”). Other forms include General Partnership (“Sociedad Colectiva”), Limited Partnership (“Sociedad en comandita”), Association (“asociación” or “cuentas en participación”), a Branch Office (“Agencia”), Individual Limited Liability Company (“Empresa Individual de Responsabilidad Limitada or E.I.R.L.”), and a Company by Shares (“Sociedad por Acciones”).¹⁰

D. ECONOMIC FREEDOM AND LIMITS OF ENTREPRENEURIAL ACTIVITIES BY THE STATE¹¹

The Chilean Constitution guarantees all persons: “The right to carry out any economic activity which is not contrary to morals, public order or national security,” abiding by the legal norms that regulate it.¹² This means the principle of economic freedom, which protects equally foreigners and Chileans, freely allowing the entrepreneur to take and decide how to address economic questions of what, how and for whom to produce, including if necessary, the transfer of capital, goods and services to Chile.

Conversely, the State and its bodies may develop entrepreneurial activities or participate therein only provided such activities or participation be authorized by a law passed by a qualified quorum. In such case, those activities shall be subjected to the common legislation applicable to pri-

7. José De Gregorio, *The Role of Foreign Direct Investment and Natural Resources in Economic Development* 12 (Cent. Bank of Chile, Working Paper No. 196, 2003).

8. Cód. Civ. art. 57.

9. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 19, § 15 (amended 2005).

10. See DELOITTE, *DOING BUSINESS IN CHILE* 8–11 (Mar. 2010), available at http://www.deloitte.com/assets/Dcom-Chile/Local%20Assets/Documents/Nuevos/Doing_Business_in_Chile_%20August%202010%20_3_.pdf.

11. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 19, § 21 (amended 2005).

12. *Id.*

vate individuals, without prejudice to exceptions for justifiable motives established by a law, being also passed by a qualified quorum.¹³

For most authors, this precept is the economic manifestation of the Principle of Subsidiarity implicit in our Constitution, but for others it is arguably tacit incorporation.¹⁴ In any case, it is easy to see that this is a mandatory limitation to excessive state intervention in the economy.

E. NON-ARBITRARY DISCRIMINATION IN ECONOMIC MATTERS

This provision establishes a non-discriminatory treatment arbitrarily imposed, to be granted by the State and its bodies in economic matters. Only by virtue of a law, and provided it does not imply discrimination, certain direct or indirect benefits accorded to any sector, an activity or a geographical region, may be authorized; or special charges affecting one or the other may be established. In case of franchises or indirect benefits, the estimated cost thereof must be annually included in the Budgetary Law.¹⁵

Therefore, according to Chilean Constitution, all persons—without distinction among nationals or foreigners—enjoy national treatment in the conduct of their economic activities, and the treatment that the State and its agencies may grant the foreign investor should be no less favorable than that afforded to nationals of Chile and under the same conditions as national investors. Thus, foreign equity can be found in different areas or activities that produce goods and services in the economy. Notwithstanding, foreign investors must adhere to the rules regulating access to some specific sectors.¹⁶

The principle of non-economic discrimination is not absolute, and does not exclude any discrimination, but only that which is arbitrary, having understood that reasonably, rationally and without infringing other provisions of the Constitution (that is, without arbitrariness) may the authority establish differences.

Consequently there are discriminations that could be called “positive” (it had been deemed necessary to provide some guarantees foreign investors, such as access to foreign exchange to remit profits and capital) and other “negative” (where the law gives more rights to local entrepreneur to foreign investors, based on reasons of sovereignty, security or international reciprocity).

Chile generally grants national treatment to foreign investors and allows them to hold up to 100 percent of the equity of an enterprise in the

13. *Id.*

14. See Mario Verdugo Marinkovic, Emilio Pfeffer Urquiaga & Humberto Nogueira A, *DERECHO CONSTITUCIONAL*, vol. I, at 297 (2d ed. 1997); RUIZ-TAGLE VIAL, *supra* note 5.

15. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 19, § 22 (amended 2005).

16. María Fernanda Carvajal & Juan Guillermo Levine, *Chile*, in, *PROJECT FINANCE IN 45 JURISDICTIONS WORLDWIDE* 49 (E. Waide Warner & Gavin R. Skene eds., 2011).

vast majority of economic sectors. No sectors or economic activities in principle exclude foreign investment. Nevertheless, there are some legal exceptions to this rule:¹⁷

- **ROAD TRANSPORTATION:** International road transportation service between Chile and Argentina, Bolivia, Brazil, Paraguay, Peru or Uruguay is reserved to companies controlled by nationals of those countries.¹⁸
- **SHIPPING:** Ownership of Chilean flag vessels is limited to Chilean natural persons, Chilean majority-owned corporations with principal domicile and real effective seat in Chile, and to co-ownerships in which a majority of members are Chilean naturals residing in Chile and in which the majority of rights belong to Chileans. Cabotage and tugging activities performed in Chilean ports are reserved to Chilean flag vessels.¹⁹
- **STOWAGE AND DOCKAGE:** Activities of stowage and dockage on Chilean ports must be carried out by Chilean majority-owned enterprises.²⁰
- **FISHING:** Ownership of Chilean fishing vessels is limited to Chilean natural persons or Chilean majority-owned corporations with principal domicile and real effective seat in Chile, unless otherwise authorized. Resident enterprises constituted by foreign non-residents are not permitted to engage in small-scale fishing.²¹
- **MINING:** Exploration, exploitation and treatment of hydrocarbons, liquid or gaseous, of uranium and lithium is subject to prior authorization.²² Thus, mining by the private sector in Chile is carried out mostly through a system of judicial concessions in a non-contentious procedure, as the Constitution establishes the total, exclusive, inalienable and everlasting ownership of the State over mines. Mining activities in certain parts of the country (seawaters subject to national jurisdiction and areas classified as important for national security) and for certain products (liquid or gaseous hydrocarbons, lithium and uranium deposits), cannot be the subject of judicial concessions; in these cases, operations can only be executed by the State, a State-owned enterprise, or by means of administrative concessions or special operation contracts.²³ “However, both national and foreign firms can participate in these sectors in certain circumstances, subject to presidential authorization.”²⁴
- **AIR TRANSPORT:** “Only Chilean natural persons or Chilean majority-owned corporations with principal domicile and real effective

17. See Organisation For Econ. Co-Operation & Dev. [OECD], *National Treatment for Foreign-Controlled Enterprises*, at 26-27 (2012), <http://www.oecd.org/dataoecd/32/21/1954854.pdf>

18. *Id.* at 26.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. Asia-Pacific Econ. Cooperation [APEC], *Guide to Investment Regimes of APEC Member Economies*, at 29, APEC Doc. 211-CT-03.2 (2010).

24. World Trade Organization Secretariat, *supra* note 1, ¶ 24.

tive seat in Chile may register an aircraft in Chile.”²⁵ Under current regulations, there is no legal reserve to nationals for air cabotage. Plus, since January 21, 2012, reciprocity is not considered in determining the eventual end, suspension or limitation of cabotage services of a foreign company.²⁶

- CREDIT: “Reasonable regulations may be issued limiting access to internal credit by” foreign investments covered by the Foreign Investment Statute (DL 600 of 1974).²⁷ However, currently the Central Bank of Chile has not issued this limitation.²⁸
- REAL PROPERTY AND LIMITING COUNTRIES: Under Chilean Law there are neither percentage restrictions on foreign holdings nor are there any restrictions on foreign ownership of real estate.²⁹ However, under article 7 of DL 1.939 of 1977 real property located in limiting territories, may not be owned by nationals of border countries, for reasons of national security.³⁰
- TELECOMMUNICATIONS: Concessions to operate public telecommunications services and intermediate services are reserved to companies established in Chile, and presidents, managers and administrators must be Chileans.³¹ However, under the principle of reciprocity, in the case of radio-broadcasting telecoms services, concessions requested or acquired by entities controlled above percent by foreign investors may be granted only if their country of origin grants Chilean citizens the same rights that they enjoy in Chile.³²
- ELECTRICITY: Electricity concessions are reserved to nationals or legal entities established in Chile.³³

F. RIGHT TO ACQUIRE PROPERTY³⁴

The Chilean Constitution ensures the freedom to acquire ownership over all types of property without making distinction of nationality, except that which nature has made common to all men or which should belong to the entire Nation, and that the law so declares.³⁵ As we have seen, when the national interest demands it, a law may establish limitations or requirements for acquiring ownership over specific property. This Act must be passed by a qualified quorum.

25. OECD, *supra* note 17, at 26.

26. Resolution No. 63, Enero 18, 2012, Diario Oficial [D.O.] (Chile).

27. Law No. 600, art. 11, Septiembre 3, 1993, D.O. (Chile).

28. Agreement No. 257-02-921105, Noviembre 5, 1992, D.O. (Chile).

29. Carvajal & Levine, *supra* note 16.

30. Law No. 1939, art. 7, Octubre 15 1977, D.O. (Chile).

31. Law No. 19733, art. 9, Mayo 18, 2001, D.O. (Chile); Law No. 18838, art. 18, Septiembre 29, 1989, D.O. (Chile); Law No.

32. Law No. 19733, art. 9, Mayo 18, 2001, D.O. (Chile).

33. D.F.L. No. 4, art. 13, Mayo 12, 2006, D.O. (Chile).

34. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 19, § 23 (amended 2005).

35. *Id.*

G. PROPERTY RIGHTS³⁶

Article 19 section 24 of Chilean Constitution recognizes the right of ownership in its diverse aspects over all classes of corporeal and incorporeal property. It also ensures industrial ownership of invention patents, trademarks, models, technological processes or other analogous creations, and the right of the author to his literary and artistic creations, (Art. 19 No. 25).³⁷ Within the latter category, include rights under a foreign investment contract, as ownership rights over intangible property.

According to the Constitution, only the law can set the mode of acquiring ownership, use, enjoy and dispose of it and establish the limitations arising from their social function. This includes as required by the general national interest, national security, utility and public health and conservation of environmental heritage.³⁸ For foreign investor purposes, Chile follows the “Hull Rule”³⁹ of prompt, adequate, and effective compensation and therefore, expropriation is allowed only if authorized by a general or special law for reasons of public or national interest, upon payment of the total compensation for property damage caused to the owner. In the absence of an agreement, the indemnification shall be paid in cash.⁴⁰

II. LEGISLATION ON FOREIGN INVESTMENT

The main legal sources of protection and regulation of foreign investment in Chile are four pieces of legislation: Decree Law No. 600 of 1974, Statute of the Foreign Investment, Law No. 18.657 on Investment Funds of Foreign Capital, Law No. 18.840, Organic Constitutional Central Bank of Chile, and the Law No. 19.840, on Investment Platform.

A. DECREE LAW NO. 600 OF 1974, FOREIGN INVESTMENT STATUTE⁴¹

Decree Law No. (“DL”) 600 is an optional mechanism for the entry of foreign investment into Chile, which is applicable both to foreign individuals and corporate bodies⁴² and to Chilean individuals who reside or domicile abroad that transfer foreign capital. Under this regime, foreign investors bringing capital, physical goods, or other forms of investment

36. *Id.* art. 19, § 24.

37. *Id.* art. 19, § 25.

38. *Id.* art. 19, § 24.

39. Andrew T. Guzman, *Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38 VA. J. INT’L L. 639, 645 (1998).

40. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [CONSTITUTION] 1980, art. 19, § 24 (amended 2005).

41. See Law No. 600, Septiembre 3, 1993, D.O. (Chile) (providing a full-text version of Decree Law 600 Foreign Investment Statute).

42. A foreign legal entity includes: companies (in any of their legal forms), corporations and foundations, foreign states, and international organizations. See *What is DL 600?*, FOREIGN INVESTMENT COMMITTEE, http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=123&Itemid=95 (last visited Mar. 29, 2012).

into Chile may petition to enter into a foreign investment contract with the State of Chile.

This body of law also creates the Foreign Investment Committee (FIC), the only agency authorized to accept the entry of foreign capital received under this decree. All investments under DL 600 require prior approval from the FIC, which establishes the terms and conditions of the respective contracts. If the investment is approved, a foreign investment contract will be executed with the Republic of Chile.

FIC is comprised of the Minister of Economy, Development and Reconstruction (who chairs the Minister of Finance), Minister of Foreign Affairs, the Minister for Planning and Cooperation, the President of the Central Bank of Chile and the Minister of respective sector, in the case of investment applications linked with ministries not represented on the committee. To fulfill its functions, the FIC has an Executive Vice President, who is the supreme head of the service and, in turn, has its legal representation, both judicial and extrajudicial.

"Since 1974, the majority of foreign investors have chosen to use DL 600. By 2009, foreign investment worth almost U.S. \$74.9 billion had been materialized through this mechanism, representing 67.3% of the foreign capital effectively entering Chile during that period."⁴³

The aforementioned capital may be brought into and shall be valued in the following forms:⁴⁴

- a) Freely convertible foreign currency, brought into Chile through the sale at an entity being authorized to transact within the "Formal Exchange Market" (FEM),⁴⁵ which transaction shall be made at the most favorable rate of exchange prevailing in the banking market.
- b) Tangible assets, in any form or condition, which shall be brought into the country under the general regulations applicable to imports not subject to exchange coverage. These assets shall be valued in accordance with the regular procedures applicable to imports.
- c) Technology in its various forms, provided it can qualify as capital, which shall be appraised by the FIC within a period of 120 days, taking into account its effective price in international markets; should the above period lapse without the valuation having been made, the value assigned shall be that estimated by the investor in an affidavit. Under no circumstances shall ownership, use or possession of technology forming part of a foreign investment contract be transferred separately from the entity to which it was originally contributed, nor shall it be subject to amortization or depreciation.
- d) Credits associated to foreign investment. The general rules, terms, interests and other aspects involved in the negotiation of foreign loans, as well as the surcharges on the total cost to be paid by the borrower for the use of foreign credits, including commissions,

43. *Id.*

44. Law No. 600, art. 2, Septiembre 3, 1993, D.O. (Chile).

45. Law No. 600, art. 2, Septiembre 3, 1993, D.O. (Chile).

taxes and sundry expenses, shall be those currently authorized or to be authorized by the Central Bank of Chile.

e) Capitalization of foreign loans and debts in freely convertible currency provided such contracts have been duly authorized. Investment projects filed with the Foreign Investment Committee, including related loans, must meet a 25/75 (equity/debt) ratio.⁴⁶

f) Capitalization of profits qualifying for remittance abroad. Profits remittances may be carried out at any time after fulfilling the relevant tax obligations.⁴⁷

“DL 600 may only be used for investments currently exceeding U.S. \$5 million, or its equivalent in freely convertible foreign currency. In the case of investments comprising tangible assets, technology and capitalization of profits or credits, the minimum amount is of U.S. \$2.5 million.”⁴⁸ Foreign investors wishing to invest in projects worth more than these sums must file an application with the FIC,⁴⁹ which is responsible for reviewing and approving each application, as appropriate. The Committee seldom rejects these applications.⁵⁰

Foreign investment authorizations under DL 600 take the form of a cost-free and indefinite duration contract between the Chilean State and the foreign investor, which may not be unilaterally amended by the State.

Article 3 of DL 600 provides:

The contracts shall state the term within which the foreign investor may bring in the capital. This term shall not exceed eight years for mining investments and three years for all others. The Foreign Investment Committee, however, by unanimous agreement of its members, may extend this limit up to twelve years in the case of mining investments, when previous exploration is required, depending on their nature and estimated duration thereof. In the case of investments in industrial and non-mining extractive projects for amounts not less than U.S. \$50,000,000 or its equivalent in other foreign currencies — FIC may extend the term up to eight years when the nature of the project so requires it.⁵¹

This contract establishes the following rights and obligations of both parties and cannot be modified or rescinded unilaterally by either party (especially by the State):⁵²

46. María Fernanda Carvajal & Juan Guillermo Levine, *Chile, in, PROJECT FINANCE* 2012 57, 60 (Walde Warner ed., Law Business Research Ltd., 2012), available at http://www.carey.cl/eng/content/bin/234/getting_the_deal_through_-_project_finance_2012.pdf.

47. Law No. 600, art. 2, Septiembre 3, 1993, D.O. (Chile).

48. Carvajal & Levine, *supra* note 46, at 60.

49. For foreign investment application forms, see *Statistics*, FOREIGN INVESTMENT COMMITTEE, <http://www.foreigninvestment.cl/> (last visited Mar. 29, 2012).

50. See World Trade Organization Secretariat, *supra* note 1, ¶ 26.

51. Law No. 600, art. 3, Septiembre 3, 1993, D.O. (Chile).

52. See *Rights Under DL 600*, FOREIGN INVESTMENT COMMITTEE, http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=124&Itemid=9 (last visited Mar. 29, 2012).

1. *Access to the Formal Exchange Market (FME)*

“An investor is guaranteed access to the formal foreign exchange market, both for incoming capital and for acquiring the currency to remit capital or profits. Under DL 600, a foreign investment is only considered as such – and the foreign investor acquires the status of foreign investor – once the corresponding capital has been transferred to Chile.”⁵³

2. *Capital and Profit Remittance*

Capital remittances may be affected only a year after the date such capital has been brought in, to encourage investment in the production of goods and services.

- No tax or other levy applies to such remittances up to the amount of the investment materialized.
- Foreign currency for these remittances can only be acquired with the proceeds of the total or partial sale or liquidation of the shares or rights corresponding to the foreign investment. Profits can be remitted at any time, once the investor has paid the corresponding taxes as demonstrated with a payment receipt.
- For the remittance of both capital and profits, the investor can use the most favorable exchange rate available on the formal foreign exchange market after obtaining a certificate from the Executive Vice-Presidency of the Foreign Investment Committee.⁵⁴

3. *Discrimination Complaint Mechanism*⁵⁵

Following the above mentioned Constitutional principles, DL 600 establishes the principle of non-discrimination, and in order to ensure the effectiveness of this guarantee, institutes an administrative procedure to prevent or overturn decisions that are at odds with such norm.

Article 9 states: “Similarly foreign investment and companies participating therein shall also be subject to the general laws applicable to domestic investment, and shall not be discriminated against, either directly or indirectly”⁵⁶

In the second paragraph Article 9 attempts to illustrate situations that would be considered discriminatory:

“Legal or regulatory provisions affecting specific productive activities shall be deemed discriminatory should they become applicable to the whole or the major part of said activities in the country, to the exclusion of foreign investment. Likewise, legal or regulatory provision which create special schemes for certain sectors of the economy or geographical areas of the country shall be deemed discriminatory

53. *Id.*; see also Law No. 600, art. 1, Septiembre 3, 1993, D.O. (Chile).

54. *Rights Under DL 600*, *supra* note 52.

55. Roberto Mayorga, Joaquín Morales, & Rodrigo Polanco, *Foreign Investment: Legal Regime and Dispute Settlement in Chile* 117 (LexisNexis Chile, 2004).

56. Law No. 600, art. 9, Septiembre 3, 1993, D.O. (Chile).

if foreign investment is refused access thereto, despite their complying with the same conditions and requirements demanded from national investors.”⁵⁷

As can be seen, this provision ensures non-discrimination with respect to “specific productive activity,” a concept that in its final paragraph Article 9 defines as an activity

“performed by companies which fall within the same definitions of internationally accepted classifications and produce goods located in the same tariff bracket in accordance with the Chilean Customs Tariff Scheme, the same tariff bracket being understood to be one in which goods do not differ by more than one unit in the last digit of the tariff applied to them.”⁵⁸

It can be seen that this principle covers the “establishment” of the investor and his “treatment” internationally known as the principle of “local or national treatment” and grants similar rights to foreign businessmen and Chile.

Article 10 of DL 600 regulates this procedure and requires that an appeal be filed against “legal norms” that can be “considered discriminatory.” The first condition refers to whether an appeal is admissible and the second to the grounds on which it can be accepted.⁵⁹

4. Tax Regime

“All persons domiciled in Chile must pay taxes on income wherever it is generated, while non-residents are liable to tax only on income generated in Chile . . . [and] [a]ll Chilean companies must pay [18.5] percent corporate tax.”⁶⁰

Foreign investors are liable for an additional tax on profit remittances and may choose between two regimes.

- Common Tax Regime: “The additional tax on profit remittances is currently 35%, against which investors can credit the [18.5] percent corporate tax. As a result, the additional tax paid by an investor cannot exceed 35[percent].”⁶¹
- Special Tax Regime: Foreign investors are entitled to include in the contracts entered into with the Chilean State an invariable tax regime under which the rate of additional tax on profit remittances is 42 percent, but cannot be modified during a period of ten years.⁶²

Regarding investments of amounts not under U.S. \$50 million, or its equivalent in other foreign currencies, having the purpose of developing industrial or extractive projects, including mining projects, which are

57. *Id.*

58. *Id.*

59. *See id.*, art. 10.

60. *Rights Under DL 600*, *supra* note 52.

61. *Id.*

62. Law No. 600, art. 7, Septiembre 3, 1993, D.O. (Chile).

brought into the country, the ten year period may be extended in such terms as may be compatible with the estimated duration of the project, but under no condition shall it exceed twenty years. Plus, stipulations may be included in the respective contracts of the legal provisions and of the resolutions or circular letters which the Internal Revenue Service may have issued, in force at the date of execution of the contract, with respect to asset depreciation regimes, carrying forward of losses and startup and organization expenses.⁶³

In the case of projects which consider the export of all or part of the goods produced, the FIC may grant the respective investors or the companies receiving contributions, for terms not exceeding those granted under article 7, the following rights:⁶⁴

- To stipulate the invariability of the legal provisions and regulations in force at the date of execution of the corresponding contract, with regards to the right to export freely.
- To authorize special regimes with respect to the return and liquidation of part or the total value of such exports and of indemnities resulting from insurance or other sources.

In addition, foreign investors and enterprises receiving foreign investment may enjoy VAT exemption on the capital goods forming part of a foreign investment project formally agreed with the State.⁶⁵ For that purpose, foreign investors should request that their investment contracts stipulate that, during the investment's implementation, they will not be liable for changes in taxes on sales and services and in import tariffs on machinery and equipment not produced in Chile and included in a list compiled for this purpose by the Ministry of Economy.

For investors signing new FDI contracts for mining projects worth at least USD \$50 million, Article 11 of DL 600 Foreign Investment Statute offers the option of an invariability regime for the specific tax on mining activities. Investors with existing foreign investment contracts who wish to use this special regime cannot be making use of the invariability regimes established in Articles 7 and 11 "bis" of DL 600 must cease to do so when applying to use Article 11 "ter."⁶⁶

Invariability established in articles 11 "bis" and 11 "ter" is not a right, but is subject to authorization by the Foreign Investment Committee. Plus, investors may waive their rights under this option, on a once only basis, and ask to be subject to ordinary tax laws. An investor can exit from this special regime at any time in favor of the standard regime, but cannot subsequently return to the special regime.⁶⁷

To simplify procedures and eliminate certain restrictions previously contained in DL 600, in December 2006 foreign investors were al-

63. *Id.*

64. *Id.*

65. Carvajal & Levine, *supra* note 46, at 61.

66. See APEC, *supra* note 23, at 27.

67. See *id.*

lowed to reinvest up to one hundred percent of their profits (eliminating the previous limit of sixty-five percent), and were offered the possibility of reinvesting such profits in other companies (not only in the firm that generated the profits in question, or its subsidiaries). In addition, the requirement to submit official translations of documents accompanying authorization applications filed with the Foreign Investment Committee was abolished.⁶⁸

B. LAW NO. 18,840, BASIC CONSTITUTIONAL ACT OF THE CENTRAL BANK OF CHILE⁶⁹

This Law establishes the Central Bank of Chile as an independent body with its own capital and technical autonomy, referred to in article 108 of the Chilean Constitution. Article 39 of this law guarantees to every person, the general principle of freedom to make foreign exchange transactions, activity that includes “buying and selling foreign currency and, in general, any act and agreement that may have the effect of creating, amending, or extinguishing an obligation payable in such currency, even if no transfer of funds or drafts to or from Chile is actually involved.”⁷⁰

But Article 42 of the same Act provides that the Central Bank may decide, through a justified resolution adopted by the majority of all Board Members, that some operations are carried out exclusively in the Formal Exchange Market (FEM), which consists of the banking entities and other entities or persons authorized by the Central Bank to be part of that market⁷¹ (i.e., Money Exchange Houses).

Among these are “[t]he remittance of foreign currency for purposes of investments, capital contributions, loans or deposits abroad”⁷² and “[t]he sale, either total or partial, in Chilean currency, of the foreign currency received, whatever its origin, by persons having their residence in Chile, as a consequence of acts or transactions conducted in Chile or abroad.”⁷³

These rules have a special impact on the financial side of foreign investment, especially when they qualify these operations as “foreign exchange operations.” For that reason, a very important source of rules on foreign investment and Chilean investment abroad are the regulations issued by the Board of the Central Bank, which are currently contained in the Compendium of Foreign Exchange Regulations (CNCI), particularly in Chapter I (“General Provisions”), II (“Exchange constraints”), III (“Rules for legal persons authorized to be part of the Formal Exchange Market other than banking entities,” XI (“Rules and Conditions for the conventions to be subscribed with Foreign Capital Investment Funds, Law No. 18,657”), XII (investments, deposits and loans to persons domi-

68. World Trade Organization Secretariat, *supra* note 1, ¶ 33.

69. See Law No. 18840, art. 39, Octubre 10, 1989, D.O. (Chile), available at <http://www.bcentral.cl/eng/about/basic-constitutional-act/law01.htm>.

70. *Id.*

71. *Id.* art. 42.

72. *Id.*

73. *Id.*

ciled or resident in Chile, other than banking entities carried out or awarded abroad and operations under Title XXIV of Law No. 18,045), and especially in Chapter XIV (“Regulations Applicable to Credits, Deposits, Investments and Capital Contributions From Abroad”).⁷⁴

Chapter XIV of the Central Bank’s Compendium of Foreign Exchange Regulations sets out the rules applicable to international exchange operations with respect to loans, deposits, investments, and capital injections from abroad.⁷⁵ Under the terms of this instrument, even though the Central Bank cannot reject a foreign investment, the Central Bank can set conditions for the transfer of funds to and from Chile to ensure stability of the currency and the normal functioning of domestic and external payments.⁷⁶

Foreign capital entering Chile under Chapter XIV receives national treatment, but it is ineligible for the benefits of DL 600, including the tax invariability. Moreover, such capital must be registered with the Central Bank, which can be done at any commercial bank before its conversion into Chilean pesos.⁷⁷

“Chapter XIV provides an easy way for bringing foreign currency into the country, which is relatively exempt from public authority intervention. Investments conducted through Chapter XIV must exceed U.S. \$10,000.”⁷⁸ The Central Bank registers investors and their investments when the capital is channeled through the mechanisms established in the Compendium of International Foreign Exchange Regulations.⁷⁹

Informing the Central bank about such operations is mandatory, even though Central Bank authorization is not required. There are no restrictions on repatriating capital, which may be repatriated at any moment, as may the benefits generated. Investments made under chapter XIV are more agile and flexible than DL 600, but DL 600 has an important benefit in form of the guarantee of contract law in contracts with the government, which is why chapter XIV is used less frequently.⁸⁰

The decisions of the Central Bank of Chile are a substantive part of the economic order. The decisions have constitutional recognition, stemming from an autonomous constitutional status, and are sovereign in monetary

74. See *Foreign Exchange Regulations*, BANCO CENTRAL DE CHILE, <http://www.bcentral.cl/eng/norms-regulations/foreign-exchange/index.htm> (last visited Mar. 29, 2012) (providing link to the Compendium of Foreign Exchange Regulations).

75. *Chapter XIV: Regulations Applicable to Credits, Deposits, Investments and Capital Contributions from Abroad*, BANCO CENTRAL DE CHILE, <http://www.bcentral.cl/eng/norms-regulations/foreign-exchange/pdf/ChapXIV14092006.pdf> (last visited Mar. 29, 2012).

76. *Id.*

77. See *id.*

78. Carvajal & Levine, *supra* note 46, at 61.

79. *Id.*

80. *Legal Framework*, MINISTRY OF FINANCE, <http://www.minhda.cl/english/investor-relations-office/incentives-for-foreign-investment/legal-framework.html> (last visited Mar. 29, 2012).

matters, which include exchange rate and internal and external payments. The Central Bank's decisions are, in short, the material exercise of regulatory authority that it is up to the Central Bank, as an independent constitutional body, in matters within its competence.

Chapter II of the current CNCI provides the operations that are to be performed exclusively in the Formal Exchange Market in accordance with article 42 of Law No. 18,840, many of which are directly related to foreign investment:⁸¹

- Operations to be carried through the Formal Exchange Market and being informed by the persons involved: in this group are credit transactions, deposits, investments and capital contributions from outside, covered in Chapter XIV of the CNCI.
- Operations that must be made through the Formal Exchange Market, which includes the conventions concluded with Foreign Capital Investment Funds, Law No. 18,657, under article 47 of Law No. 18,840 and Chapter XI of CNCI.

From an economic perspective, this regulatory body is a mechanism for admission of capital and cannot be treated legally as another foreign investment statute. It is only an expression of the regulatory authority of the Central Bank of Chile in foreign exchange matters, which may be modified by the Board of the Central Bank.

As an example, since September 1999, the Central Bank of Chile, adopting a floating regime, abandoned the nominal purpose of the exchange rate, represented by the existence of an exchange rate band, and therefore provided the economy the flexibility to cope with external shocks.⁸²

As a result of the above, as general rule, investors wishing to bring foreign currency into the country and repatriate the investment or its profits shall do it through a member of the FEM, but investors do not have an obligation to settle the foreign currency into local currency.

C. LAW NO. 18,657 ON FOREIGN CAPITAL INVESTMENT FUNDS⁸³

This act regulates the Foreign Capital Investment Funds (FCIF) and Foreign Capital Risk Investment Funds (FCRIF), especially with regard to administration, taxation, and exchange. Its provisions repeatedly refer to Law No. 18,815, which regulates Mutual Funds (MF).⁸⁴

81. BANCO CENTRAL DE CHILE, <http://www.bcentral.cl/eng/norms-regulations/foreign-exchange/compendium.htm> (last visited May 23, 2012).

82. Felipe Morandé & Klaus Schmidt-Hebbel, *Monetary Policy and Inflation Targeting in Chile*, <http://cdi.mecon.gov.ar/biblio/docolec/itp/8.pdf> (last visited Apr. 3, 2012).

83. Law No. 18657, Septiembre 29, 1987, D.O. (Chile); see GLOBAL LEGAL INFORMATION NETWORK, <http://www.glin.gov/view.action?glinID=24097> (last visited Mar. 29, 2012) (providing a summary of Law No. 18,657).

84. *Legal Framework*, *supra* note 80.

Through Law No. 18,657, Chilean law defines Foreign Capital Investment Funds (FCIF), which are designed to attract foreign investment to Chile. The equity of the FCIF is made up of contributions made outside of the national territory, (they are therefore, funds established abroad) by individuals or legal or collective entities in order to invest in Chilean financial assets. These assets may be financial instruments, such as: securities that are publicly offered in Chile, or in the case of a foreign capital investment risk fund, stocks, bonds or other debt vehicles, whose issue has been registered with the Superintendency of Securities and Insurance.⁸⁵

In both cases, a corporation established in Chile whose sole purpose is to administer the FCIF will administer the FCIFs. The investment may be covered by DL 600 or article 47 of Law No. 18,840 (and Chapter XIV of CNCI).⁸⁶

Law No. 18,657 allows FCIFs to invest in shares in Chilean corporations, instruments guaranteed by the banking system, letters of credit, bonds, and other securities approved by the SVS, provided such funds meet certain portfolio diversification requirements and have a minimum paid-up capital of not less than 6,000 UF (1 UF on January 1, 2012 was equivalent to USD \$26).⁸⁷ The law, therefore, is directly related to foreign investment rules, allowing financial investments to capitalize on resources from abroad business or domestic companies, buying shares and bonds issued by them.

Remittances made abroad on the invested capital are subject to a single tax of 10 percent.⁸⁸ The law establishes specific limitations for these operations. Among others, the funds may not be used to acquire more than 5 percent of the business it is invested in, and may not invest more than 10 percent of its assets in one company, nor may it hold directly or indirectly more than 25 percent of the equity in a single company. At the end of the first year of operation, funds shall have, at least 20% of its asset invested in shares of publicly traded corporations. After the third year, at least 80% of its assets must be invested in equities and long-term financial. However, no less than 60% of assets must be invested in publicly traded companies. The capital invested may not be repatriated sooner than five years from the date it entered Chile, although there are no minimums on the repatriation of the benefits generated by the capital.⁸⁹

Repatriation of capital from sales of such instruments is allowed only after five years. No restrictions apply to the remittance of profits generated by these funds. These funds have access to the official foreign exchange market for repatriation of capital and profits earned on this

85. *Id.*

86. See Law No. 18657, Septiembre 16, 1987, D.O. (Chile), available at <http://www.leychile.cl/Navegar?idNorma=30044> (providing a full-text version of Law No. 18,657 in Spanish).

87. *Legal Framework*, *supra* note 80.

88. Law No. 18657, art. 15, Septiembre 29, 1987, D.O. (Chile).

89. *Id.* arts. 7, 8, 14(b).

capital.⁹⁰

It is important to note, that the Foreign capital investment funds law (FCIFs), (Law No. 18.657) establishes a preferential tax treatment for Foreign capital investment funds. FICFs are required to obtain a favorable report issued by the Chilean Securities and Insurance Supervisor [“Superintendencia de Valores y Seguros” (SVS)] in order to conduct business in Chile. . . . A FICF may hold a maximum of 5% of a given company’s shares, although this can be increased to a maximum of 10% if the company issues new shares. Furthermore, no more than 10% of a FICF’s assets may be invested in a given company’s stock, unless the security is used or guaranteed by the Republic of Chile or the Central Bank. All together, no more than 25% of the outstanding shares of any listed company may be owned by FICFs.⁹¹

Portfolio investment in Chile had not only been regulated by Law No. 18.657, but also by Chapter XXVI of Central Bank’s Compendium of Foreign Exchange Regulations. The latter Chapter allowed Chilean corporations with a minimum specified international credit rating, which were listed on foreign exchanges, to issue shares or share-backed instruments for purchase abroad. The Central Bank of Chile kept a record of the investors and the investments that took place through this mechanism.⁹² The procedure was abrogated by the Central Bank on April 19, 2001.

D. LAW NO. 19,840 ON INVESTMENT PLATFORM⁹³

This act set up special tax rules for Chilean companies incorporated by foreign investors’ capital as a vehicle to invest from Chile to abroad.⁹⁴ These companies are called “Platform for Investment Companies” and deemed a nonresident, non-domiciled entity, having in mind the promotion of investments in Latin America and the rest of the world.

Law No. 19,840 encourages multinational companies to use Chile as a regional platform for investing in third countries. The law provides a special tax regime whereby companies established in Chile under this law can make investments abroad without being liable in Chile for taxes on the income generated by those investments. However, Municipal Tax is applicable.

Significant tax benefits are given for using Chile as the location of their business holdings, such as: 1) The “Platform” company is subject to Chilean taxes only on Chilean source income and therefore the dividends accrued from abroad are not taxed in Chile, 2) The distribution or

90. *See id.* art. 14.

91. APEC, *supra* note 23, at 28.

92. World Trade Organization Secretariat, *supra* note 1, ¶ 34.

93. *See* Law No. 19840, Noviembre 11, 2002, D.O. (Chile), available at <http://www.leychile.cl/Navegar?idNorma=204930> (providing a full-text version of Law No. 19840 in Spanish).

94. *See id.*

remittance abroad of dividends paid on such foreign source income are not taxed in Chile, and also 3) The capital gain that is generated by selling participation in the “Platform” company is not taxed in Chile.

The “Platform” company must keep full accounting records in the foreign currency of its capital, and obtain registration with the Chilean Internal Revenue Service (SII), which requires broad and periodic disclosure of information.

In addition, Law No. 19,840 contains provisions aimed at preventing the use of Chile as a tax haven (investments must be made in companies incorporated and formally existing abroad in a country that is not listed as a low-tax jurisdiction) or the misuse of this regime by domestic firms to avoid paying domestic taxes (companies covered by this regime are required to file reports and are not covered by the rules on banking secrecy and confidentiality). The “Platform” companies also have to accept stricter controls by the tax authority in relation to transfer prices.⁹⁵

Nevertheless, its use has been limited and subject to various criticisms about its lack of precision concerning the payment of municipal licenses and its relationship with rules on excessive debt financing of projects and other tax matters.⁹⁶ “The authorities reported that twenty-two firms had joined this regime as of March 2009.”⁹⁷

III. INTERNATIONAL INVESTMENT AGREEMENTS (IIAS)

During the 1990s, in order to encourage foreign investments and follow the example of Asian and African nations, most Latin American countries entered into different bilateral investment treaties (BITs). Changes in the development strategies in Latin America have since led to a rapid growth of BITs, which reached a total of 300 treaties by the end of 1999, ninety-three percent of which were signed during the 1990s.⁹⁸

BITs are treaties between two states, by which each one promises, on a reciprocal basis, to observe the standards of treatment laid down by the treaty in its dealings with investors from the other contracting state. Basic features usually include scope and definition of foreign investment, most-favored-nation (MFN) clause, national treatment, fair and equitable treatment, guarantees and compensation in respect of expropriation, warranties of free transfer of funds, capital and profits, subrogation on insurance claims, and—notably—dispute settlement provisions through recourse to international arbitration.⁹⁹

95. WORLD TRADE ORGANIZATION, *TRADE POLICY REVIEW: CHILE 1997* 41 (1997).

96. Mayorga, *supra* note 55, at 120.

97. World Trade Organization Secretariat, *supra* note 1, ¶ 35.

98. BILATERAL INVESTMENT TREATIES: 1959-1999, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT 22-123 (2000), available at <http://www.unctad.org/en/docs/poiteiad2.en.pdf>.

99. Rodrigo Polanco Lazo, *International Arbitration in Times of Change: Fairness and Transparency in Investor-State Disputes*, in 104 PROCEEDINGS OF THE ANNUAL MEETING 591, 592 (Am. Soc’y of Int’l Law, 2010), available at <http://www.jstor.org/stable/10.5305/proccannmeetasil.104.0591>.

During the same period of time, the initial resistance of Latin American countries to ratify the 1965 ICSID Convention—that created the International Centre for Settlement of Investment Disputes (ICSID), an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, dramatically shifted during 1991 due to its signature by Argentina, Bolivia, Chile, and Peru and the conclusion of several BITs.¹⁰⁰

Widespread acceptance of the Washington Convention by Latin American countries is relatively a recent phenomenon.¹⁰¹ During the Preparatory Meeting of the Executive Directors of the World Bank to approve the Convention on the Settlement of Investment Disputes between States and Nationals of other States, the representative of Chile, on behalf of the majority of Latin American countries, manifested their complete opposition to that treaty, based on the “*Calvo Doctrine*.”¹⁰² Paradoxically, only twenty-five years later, that position was completely reversed and almost all the countries of the Latin America became members of ICSID with the notable exceptions of Brazil, Mexico, and Cuba.¹⁰³

Chile is also a member of the Multilateral Investment Guarantee Agency (MIGA) and the Overseas Private Investment Corporation (OPIC) and ratified the Inter American Convention on International Commercial Arbitration and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.¹⁰⁴

In this context, currently Chile has signed fifty-three BITs to promote and protect investment among signatory countries.¹⁰⁵ The majority of them have been signed with European and American countries.¹⁰⁶

With Europe, Chile has signed twenty-three agreements: Spain (October 2, 1991); Germany (October 21, 1991); Switzerland (November 11,

100. See Ignacio Antonio Vincentelli, *The Uncertain Future of ICSID in Latin America*, SELECTED WORKS 12 (Dec. 2009), http://works.bepress.com/ignacio_vincentelli/1.

101. See *id.*

102. Katia Fach Gomez, *Latin America and ICSID: David Versus Goliath?*, UNIVERSITY OF ZARAGOZA 1 (July 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708325&http://www.google.com/url?sa=t&rct=j&=latin%20america%20and%20icsid%3A%20david%20versus%20goliath%3F&source=web&cd=2&ved=0C CYQFjAB&url=http%3A%2F%2Fpapers.ssrn.com%2Fsol3%2Fdelivery.cfm%2FSSRN_ID1709233_code1127096.pdf%3Fabstractid%3D1708325%26mirid%3D1&ei=ABB9T6DIElnO9QSxlvWbDQ&usg=AFQjCNEBf9VI0N1rKX9M2cswxBtJ6V7TMw.

103. VINCENTELLI, *supra* note 100, at 11, 13.

104. *MIGA Member Countries*, MULTILATERAL INVESTMENT GUARANTEE AGENCY: WORLD BANK GROUP, <http://www.miga.org/whoware/index.cfm?stid=1789> (last visited Apr. 4, 2012); *Current OPIC Projects*, OVERSEAS PRIVATE INVESTMENT CORP., http://www.opic.gov/projects/current-opic-projects?field_fiscal_year_value_many_to_one=All&field_project_type_value_many_to_one=All&field_project_dollar_range_value_many_to_one=All&field_project_region_value_many_to_one=All&field_country_value_many_to_one=Chile (last visited Apr. 4, 2012).

105. *List of Bilateral Investment Treaties with Chile*, ORG. OF AM. STS., http://www.sice.oas.org/ctyindex/CHL/CHLBits_e.asp (last visited Mar. 27, 2012) (Treaty with Colombia superseded by a Foreign Investment Chapter of the Free Trade Agreement with Chile of 2006).

106. *Id.*

1991); France (July 14, 1992); Belgium/Luxembourg (July 15, 1992); Italy (March 8, 1993); Sweden (May 24, 1993); Finland (May 27, 1993); Denmark (May 28, 1993); Norway (June 1, 1993); Croatia (November 28, 1994); Czech Republic (April 24, 1995); Portugal (April 28, 1995); Romania (July 4, 1995); Poland (July 5, 1995); Ukraine (October 30, 1995); United Kingdom (January 8, 1996); Greece (July 10, 1996); Hungary (March 10, 1997); Austria (September 8, 1997); Netherlands (November 30, 1998); Poland (September 22, 2000); and Iceland (June 26, 2003).¹⁰⁷

With American countries, Chile has signed seventeen treaties: Argentina (August 2, 1991); Venezuela (April 2, 1993); Ecuador (October 27, 1993); Brazil (March 22, 1994); Bolivia (September 22, 1994); Paraguay (August 7, 1995); Uruguay (October 26, 1995); Cuba (January 10, 1996); Costa Rica (July 11, 1996); El Salvador (November 8, 1996); Guatemala (November 8, 1996); Nicaragua (November 8, 1996); Panama (November 08, 1996); Honduras (November 11, 1996); Colombia (January 22, 2000);¹⁰⁸ Peru (February 2, 2000);¹⁰⁹ and Dominican Republic (November 28, 2000).¹¹⁰

Among African countries, Asian countries, and countries from Oceania, Chile has signed thirteen more BITs: Turkey (August 21, 1998); Tunisia (October 23, 1998); and South Africa (November 12, 1998); Malaysia (November 11, 1992); China (March 23, 1994); Philippines (November 20, 1995); Republic of Korea (September 6, 1996); Indonesia (April 7, 1999); Vietnam (September 16, 1999); Egypt (August 5, 1999); and Lebanon (October 13, 1999); Australia (July 9, 1996);¹¹¹ and New Zealand (July 22, 1999).¹¹²

Although Chile has a large number of "Investment Promotion and Protection Agreements" ("IPPs") in force (thirty-five as of mid-2009),¹¹³ "it has not negotiated this type of agreement in recent years, [instead] preferring to include investment disciplines in its trade agreements."¹¹⁴

"Chile has adopted investment disciplines in most of the preferential trade agreements it has signed.¹¹⁵ In general, the investment chapters included in these agreements contain disciplines on sector liberalization (through negative lists), national treatment, MFN treatment, minimum

107. *Id.*

108. *Id.*

109. *Id.* (Treaty with Peru superseded by a Foreign Investment Chapter of the Free Trade Agreement with Chile of 2006).

110. *Id.*

111. *Id.* (Treaty with Australia superseded by a Foreign Investment Chapter of the Free Trade Agreement with Chile of 2006).

112. *List of Bilateral Investment Treaties with Chile*, *supra* note 100.

113. *List of IPPAs Signed by Chile*, FOREIGN INVESTMENT COMMITTEE, http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=220&Itemid=61 (last visited Mar. 27, 2012).

114. *Chile: Trade Policy Regime*, WORLD TRADE ORGANIZATION, WT/TPR/S/220 at 19, available at www.wto.org/english/tratop_e/tpr_e/s220-02_e.doc (last visited Mar. 28, 2012).

115. *Id.*

standard of treatment, performance requirements, free transfer of capital, expropriation and compensation, and dispute settlement (including investor-State arbitration).¹¹⁶ Chile has, therefore, signed eight Free Trade Agreements including Investment Chapters with: Canada (December 5, 1996); Mexico (October 1, 1998); Republic of Korea (February 15, 2003); United States of America (June 6, 2003); Peru (August 22, 2006); Colombia (November 27, 2006); Japan (March 27, 2007); Australia (July 3, 2008).¹¹⁷

During the 1990s and 2000s, the “Chilean Model BIT” included the following provisions that in some cases have been superseded by recent FTA’s investment chapters:¹¹⁸

- **TRANSFER OF FUNDS:** The Chilean Model BIT refers only to the capital that has actually been transferred from abroad. The aim of this provision is precisely to prevent immigrants who have lived in the country for years from protecting their investments with resources obtained from Chile, creating a situation of unfair discrimination with the rest of the population. This means that the treaty does not protect all investments made by nationals of the other contracting party; the investments also have to come from abroad. There has been a departure of this principle in the investment chapters of the FTAs signed in recent years, which consider the possibility of having foreign investment even if transfer of funds has not been made.
- **PRE-ESTABLISHMENT AND ESTABLISHMENT:** According to this provision, investment is only protected if it has been effectively completed. This is a factual element: the currency must have been transferred to the country and settled. Because of this, the treaty does not protect investments that are intended to be made, but those that have already been made. But, this principle has not been applied in an absolute way, and in all the Investment Chapters of the FTAs subscribed by Chile, includes pre-establishment rules, such as in the agreements between Canada and the United States: “investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, *that attempts to make*, is making, or has made an investment in the territory of the other Party.” This concept has been defined only in the FTAs with Peru and Colombia as meaning “that an investor intends to make an investment, when you have made the essential actions needed to make such an impression, such as the channeling of resources for the establishment of the capital of a company, obtaining permits and licenses, among other”. Moreover, we need to consider that definitions of “investment” and “investor” are becoming increasingly broad and comprehensive, especially in the Investment Chapters of FTAs.

116. *Id.*

117. *List of Free Trade Agreements with Chile*, ORG. OF AM. STS., http://www.sice.oas.org/ctyindex/CHL/CHLAgreements_e.asp#FTAs (last visited Mar. 28, 2012).

118. See Mayorga et al., *supra* note 55, at 90.

- **LEGAL INVESTMENT:** Protected investment is only carried out in accordance with the treaty and the law of the host country. In other words, even if the investment is made, capital is transferred to the host country, and foreign currency is settled, this is not sufficient for the protection to operate, if these transactions were not in accordance with domestic law. As we have mentioned, the use of Formal Exchange (FEM) for incoming capital and for acquiring the currency to remit capital or profits is mandatory for most foreign investment.
- **SOLE AND FINAL JURISDICTION:** Without a doubt, the most interesting features of our IIAs are related to the settlement of disputes between a Contracting Party and an investor of the other Contracting Party. Disputes arising under this Agreement, between a Contracting Party and an investor of another Contracting Party, which have made investments in the territory of the former, shall, to the extent possible, be settled through amicable consultation. If these consultations fail to produce a solution within three months of the date of application for settlement, the investor may submit the dispute to the competent courts of the Contracting Party in whose territory the investment was made, or to international arbitration at the International Centre for Settlement of Investment Disputes ("ICSID") or the United Nations Commission on International Trade Law ("UNCITRAL"). To this end, each Contracting Party gives its consent in advance which is irrevocable for all differences and can be submitted to arbitration.

"Following what is increasingly the practice in modern investment treaties, most agreements include alternative forms of arbitration."¹¹⁹ This might prove particularly relevant where ICSID arbitration is unavailable due to jurisdictional constraints.¹²⁰ The vast majority of this group refers to arbitration under UNCITRAL rules.¹²¹ From the group analyzed, only in the case of Mexico is a reference made to arbitration under the International Chamber of Commerce.¹²²

In all BITs and Investment Chapters of FTAs signed and approved by Chile,¹²³ any controversy between a Contracting Party and the investor of the other Contracting Party must be solved, if possible, through consulta-

119. Miguel Rodriguez Mendoza et al., *Investment Agreement in the Americas*, ORG. OF AM. STATES 409 (1999).

120. *Id.*

121. *Id.*

122. John C. Hamilton & Michael Roche, *Survey of Trends in Latin American Arbitration*, INT'L DISPUTES QUARTERLY, available at http://www.whitecase.com/idq/summer_2009_1a/ (last visited Mar. 28, 2012) (this feature also is considered in BIT between Haiti and the United States of America).

123. Thirteen BITs are currently still not in force (Brazil, Hungary, Turkey, Tunisia, South Africa, Netherlands, Indonesia, Viet Nam, Colombia, Egypt, Lebanon, New Zealand, and Dominican Republic). From forty treaties in force, two have been replaced by an investment chapter within an FTA (Australia and Peru). All FTAs have entered into force. *List of International Agreements*, FOREIGN INVESTMENT COMMITTEE, available at http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=150&Itemid=77 (last visited Mar. 28, 2012).

tion or negotiations between parties.¹²⁴ This is a prerequisite to attempt further domestic litigation or international arbitration and should not be avoided or derived to diplomatic protection.¹²⁵ In fact, the latter is expressly prohibited in almost all these agreements, with the notable exceptions of those between Malaysia and Belgium/Luxembourg.

If amicable consultations cannot solve disputes in a range that goes from three to six months,¹²⁶ from the moment that the controversy is presented, the investor can choose between submitting it to the domestic jurisdiction of the host State or to international arbitration.¹²⁷ Almost in all cases this choice is irrevocable and definitive.¹²⁸ The only exceptions are contained in the treaties subscribed to by Germany, Belgium/Luxembourg, Netherlands, Austria, and Switzerland where if the difference cannot be settle amicably in the referred six months, the dispute will be submitted to competent tribunals of the Host State. Only eighteen months after that,¹²⁹ if there is no final substantial decision,¹³⁰ if there is still controversy, or if parties agree before, the dispute can be submitted to international arbitration.¹³¹

In a significant number of treaties, recourse through arbitration precludes recourse in local courts.¹³² According to this principle (sometimes called “fork-in-the-road”), the election made by the investor of either international arbitration or domestic remedies is deemed to be final.¹³³ But, we must consider that current interpretation of these provisions is that they do not apply to every legal action taken in domestic courts related to investments; otherwise the investor would have no means of asserting its rights.¹³⁴

124. Scott R. Jablonski, *¡Sí Po! Foreign Investment Dispute Resolution Does Have a Place in Trade Agreements in the Americas: A Comparative Look at Chapter 10 of the United States-Chile Free Trade Agreement*, 35 U. MIAMI INTER-AM. L. REV. 627, 645 (2004).

125. *Id.*

126. Free Trade Agreement, Chile-U.S., art. 22.6, Jan. 1, 2004, available at http://www.ustr.gov/sites/default/files/uploads/agreements/fta/chile/asset_upload_file683_4016.pdf (last visited Mar. 29, 2012) [hereinafter “Chile-U.S. FTA”].

127. *Id.*

128. David Gantz, *Investor-State Arbitration Under ICSID, the ICSID Additional Facility and the UNCTAD Arbitral Rules*, U.S./VIETNAM TRADE COUNS. EDUC. F., http://www.usvtc.org/trade/other/Gantz/Gantz_ICSID.pdf (last visited Mar. 29, 2012) (in the treaty with Malaysia, surprisingly a provision exists that permits a foreign investor to select between arbitration or conciliation—both in accordance with ICSID rules).

129. Bilateral Investment Treaty, Chile-Austria, art. 9 (Sept. 8, 1997) (stating that when there is still a controversy under this BIT, parties must wait thirty-six months before the dispute can be submitted to arbitration).

130. *Id.*; Bilateral Investment Treaty, Chile-Belgium, art. 9 (July 15, 1992) (showing that the eighteen month requirement is only applied the treaties with Austria and Belgium/Luxembourg).

131. Chile-U.S. Free Trade Agreement, *supra* note 126.

132. Gantz, *supra* note 128, at 755.

133. Alejandro Escobar, *Introductory Note on Bilateral Investment Treaties Recently Concluded by Latin American States*, 11 ICSID REV. 86 (1996).

134. Cristoph Schreuer, *Traveling the BIT Route: Of Waiting Periods, Umbrella Clauses and Forks in the Road*, 5 J. WORLD INV. & TRADE 231 (2004).

To submit the dispute to international arbitration, as a general rule the investor must choose among the institutional arbitration of ICSID,¹³⁵ or an ad hoc arbitration under UNCITRAL rules.¹³⁶ But an exception exists in the BITs with Cuba and China where the treaty itself regulates the procedure.

Concerning ICSID, Chile has only three arbitration cases registered under ICSID, and none under UNCITRAL rules, summoning violation of bilateral investment treaties: *Víctor Pey Casado and President Allende Foundation v. Republic of Chile* (Case No. ARB/98/2); *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile* (Case No. ARB/01/7); and *Sociedad Anónima Eduardo Vieira v. Republic of Chile*, (Case No. ARB/04/7).¹³⁷ Chile has only won the latter case.¹³⁸

It has been said that developing countries seem to need arbitration, at least as much as developed countries, in order to settle international disputes.¹³⁹ But, “the arbitration that developing countries need is not always the arbitration they get.”¹⁴⁰ Undoubtedly, the way of dispute resolution agreed on in bilateral investment treaties contains an implicit understanding (or imposition) that the external forum could be more favorable, agile and trustable than a domestic jurisdiction.

IV. INVESTMENT FLOWS IN A TIME OF CRISIS

After examining Chile’s Constitutional provisions, legal regulation and international investment treaties, we can conclude that Chile has almost completely eliminated the called “Calvo Doctrine” invoked, previously,

-
135. David Gantz, *Investor-State Arbitration Under ICSID, the ICSID Additional Facility and the UNCTAD Arbitral Rules*, U.S./VIETNAM TRADE COUNSEL EDUCATION FORUM, http://www.usvtc.org/trade/other/Gantz/Gantz_ICSID.pdf (last visited Mar. 29, 2012) (In the treaty with Malaysia, surprisingly a provision exists that permits a foreign investor to select between arbitration or conciliation—both in accordance with ICSID rules.).
 136. *Id.* In the great majority of BITs signed and approved by Chile, only ICSID Arbitration Rules are applicable. This happens in the agreements with Germany, Belgium/Luxembourg, Malaysia, Venezuela, Ukraine, Sweden, Romania, United Kingdom, Portugal, Paraguay, Panama, Norway, Nicaragua, Honduras, Guatemala, Finland, Philippines, El Salvador, Ecuador, Denmark, China, Croatia, Costa Rica, Republic of Korea, Bolivia, Indonesia, Egypt, Tunisia and Holland. In a significant group of treaties, there is a choice of either ICSID or UNCITRAL Arbitration Rules: Argentina, Spain, France, Uruguay, Czech Republic, Poland, Italy, Hungary, Greece, Brazil, Austria, Australia, Viet Nam, Lebanon, New Zealand, Turkey and South Africa. Only in one treaty there is the possibility to opt for UNCITRAL Arbitration: in the BIT with Cuba, where the investor must pick among ad hoc arbitration under UNCITRAL rules or under rules established in the same agreement. *Id.*
 137. Víctor Pey Casado & President Allende Found. v. Republic of Chile, ICSID Case No. ARB/98/2 (May 5, 2010); MTD Equity Sdn. Bhd. & MTD Chile S.A. v. Chile, ICSID Case No. ARB/01/7 (May 25, 2004); Sociedad Anónima Eduardo Vieira v. Republic of Chile, ICSID Case No. ARB/04/7 (Dec. 10, 2010).
 138. *See id.*
 139. R. Rajesh Babu, *International Commercial Arbitration and the Developing Countries*, 4 AALCO QUARTERLY BULLETIN 385, 386 (2006).
 140. Mauro Rubino-Sammartano, *Developing Countries vis-à-vis International Arbitration*, 13 J. INT’L ARB. 21 (1996).

by most of Latin American countries to take the position that under international law, aliens had no right greater than citizens of the host country. Under such doctrine, the principle that foreigners merit more regard, privileges more marked and extended, than those accorded to the nationals of the country where they reside it is contrary to the principle of equality of States.¹⁴¹

This also constitutes a departure from the traditional international principle of exhaustion of local remedies, according to which a foreign investor was limited to bringing a claim against the host state in a domestic court or having its home state assume his claim against the host state in a sort of diplomatic protection.¹⁴²

Chile is also evidence that Latin American countries subscribe to International Investment Agreements (“IIAs”) not only with developing countries, although that is where they usually begin, but also with other States of the region and other developing countries.¹⁴³ As a result, the dividing line for IIAs between capital exporting and capital importing countries no longer holds true and, in many instances, Chile approaches bilateral investment treaties with the dual purpose of protecting its outward investments to, while attracting inward investment from, the other BIT partner.¹⁴⁴

But does this framework work in a time of crisis? Micro evidence of the role of Foreign Direct Investment (“FDI”) in economic crises is scarce. Relatively few studies have examined how multinational companies (“MNCs”) respond to the crisis compared to local firms, and how MNCs link establishment performance across countries.¹⁴⁵ Investigating the response of multinational and domestic firms to the economic downturn in Chile, some authors did not find that multinationals reacted differently to the economic crisis than other domestic firms.¹⁴⁶

It was initially thought that Latin America might be “de-coupled” from the current global financial crisis, because since 2003 the region rode a commodities boom and piled up reserves.¹⁴⁷ Moreover, Chile and other countries in the region (e.g., Peru, Mexico) created “stabilization funds”

141. ANDREAS LOWENFELD, *INTERNATIONAL ECONOMIC LAW* 395 (2002).

142. CHITTHARANJAN FELIX AMERASINGHE, *LOCAL REMEDIES IN INTERNATIONAL LAW* 140 (2nd ed. 2004).

143. *BILATERAL INVESTMENT TREATIES: 1959-1999*, *supra* note 98; *See List of Free Trade Agreements with Chile*, ORGANIZATION OF AMERICAN STATES, *supra* note 117.

144. Laura Alfaro & Maggie Chen, *Surviving the Global Financial Crisis: Foreign Direct Investment and Establishment Performance* 5 (Harvard Business School, Working Paper No. 10-110, 2010).

145. Roberto Álvarez & Holger Görg, *Multinationals as Stabilizers? Economic Crisis and Plant Employment Growth*, INST. FOR THE STUDY OF LAB. (IZA) DISCUSSION PAPERS (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=981164.

146. Kevin P. Gallagher, *The Global Financial Crisis and Foreign Direct Investment in Latin America*, LATIN AMERICAN TRADE NETWORK (Nov. 2008), http://www.ase.tufts.edu/gdae/Pubs/rp/Gallagher_LATN_Nov08.pdf.

147. *Id.*

to capture some of the benefits of boom years to spend during bust cycles.¹⁴⁸ Now that is clear that the crisis also affected Chile and Latin America, what happened with FDI inflows?

If we review Chilean foreign investment inflow after and before the crises we can see that between 1974 and 2010, 25.9% of DL 600 investments originated in the United States.¹⁴⁹ It was followed by Spain (18.7%), Canada (17.7%), the United Kingdom, (8.5%), Australia (4.8%) and Japan (3.9%).¹⁵⁰ During that period, the member states of the enlarged European Union accounted for 39.6% of FDI materialized through DL 600.¹⁵¹ Therefore, almost all FDI in Chile is covered not only with constitutional and specialized legal provisions, but also with international investment agreements. If we examine the last three years of FDI inflows, foreign investment in Chile grew 43.4% between 2009 and 2010.¹⁵² According to a report published by the United Nations Conference on Trade and Development ("UNCTAD"), Chile experienced the third largest growth in foreign investment in Latin America, following Mexico and Peru.¹⁵³ On a global scale, increases in direct foreign investment only augmented less than one percent between 2009 and 2010, growing from USD \$1.114 billion to USD \$1.122 billion.¹⁵⁴

According to the Foreign Investment Committee, total foreign investment approved in Chile in the year 2011 reached USD \$13.8 billion, a new record, and a four percent increase from 2010.¹⁵⁵

Chile's impressive growth over the last three years came in close behind Mexico and Brazil, which remain the region's major destinations for foreign investment.¹⁵⁶ Surprisingly, Brazil has largely remained at the periphery of the new international legal order surrounding foreign investment, which, as we have seen, is typified by bilateral treaties and investor-State arbitration.¹⁵⁷ Unlike most developing countries in Latin

148. *Origin of FDI*, FOREIGN INVESTMENT COMMITTEE, http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=133 (last visited Apr. 3, 2012).

149. *Id.*

150. *FDI Statistics*, FOREIGN INVESTMENT COMMITTEE, http://www.foreigninvestment.cl/index.php?option=com_content&view=frontpage&Itemid=61 (last visited Apr. 3, 2012).

151. *Foreign Investment in Chile Grew 43.4% Between 2009 and 2010*, thisisChile.cl, <http://www.thisischile.cl/Article.aspx?id=5983&sec=190&cje=Negocios&t=foreign-investment-in-chile-grew-43.4%25-between-2009-and-2010&idioma=2> (last visited Apr. 3, 2012).

152. *Id.*

153. *Id.*

154. *Chile Attracts a Record US\$13.7 Billion in Foreign Investment*, thisisChile.cl, <http://www.thisischile.cl/7372/2/chile-attracts-a-record-us137-billion-in-foreign-investment/News.aspx> (last visited Apr. 3, 2012).

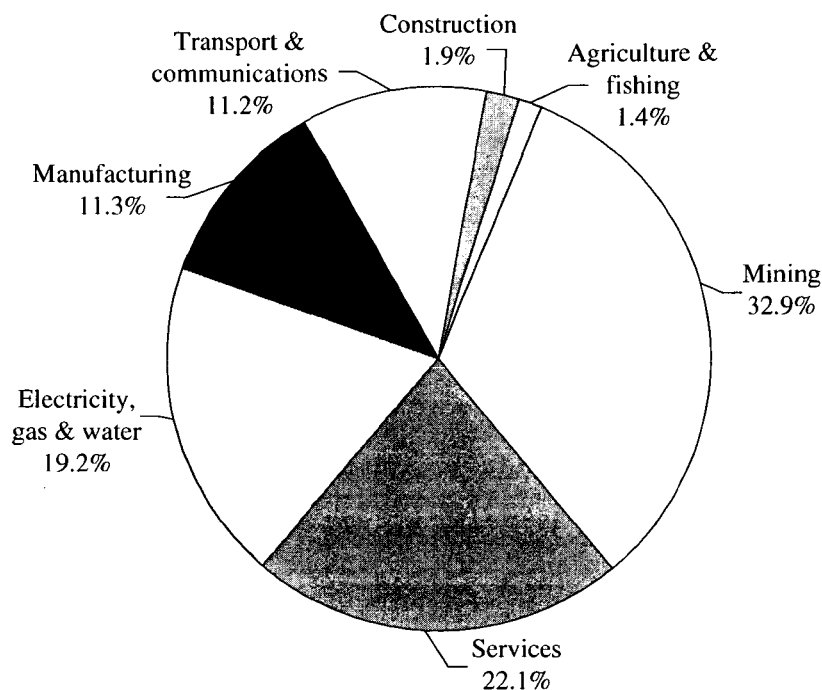
155. *Foreign Investment in Chile Grew 43.4% Between 2009 and 2010*, *supra* note 151.

156. Gary Gereffi & Peter Evans, *Transnational Corporations, Dependent Development, and State Policy in the Semiperiphery: A Comparison of Brazil and Mexico*, 16 LATIN AM. RESEARCH REV. 31 (1981), available at <http://www.jstor.org/stable/2502914>.

157. Noah Rubins, *Investment Arbitration in Brazil*, 4 WORLD INVESTMENT 1073, 1074 (2003).

America, Brazil has been hesitant to provide broad-based consent to arbitration of international investment disputes through domestic law or international treaty.¹⁵⁸ Furthermore, until very recently, the effectiveness of investment arbitration involving Brazil was questionable due to the country's failure to ratify the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the "New York Convention."¹⁵⁹

But Brazil is still the Latin American country with the most FDI. The question can be posed about the importance of this procedural guarantee *vis-à-vis* the overall economy and market of a country. Argentina is the counter example: while it is the country with more BITs signed than any other country in the region, its flow of FDI has dropped dramatically due to problems in the economy and an explosive increase of international arbitration cases derived from that situation.¹⁶⁰

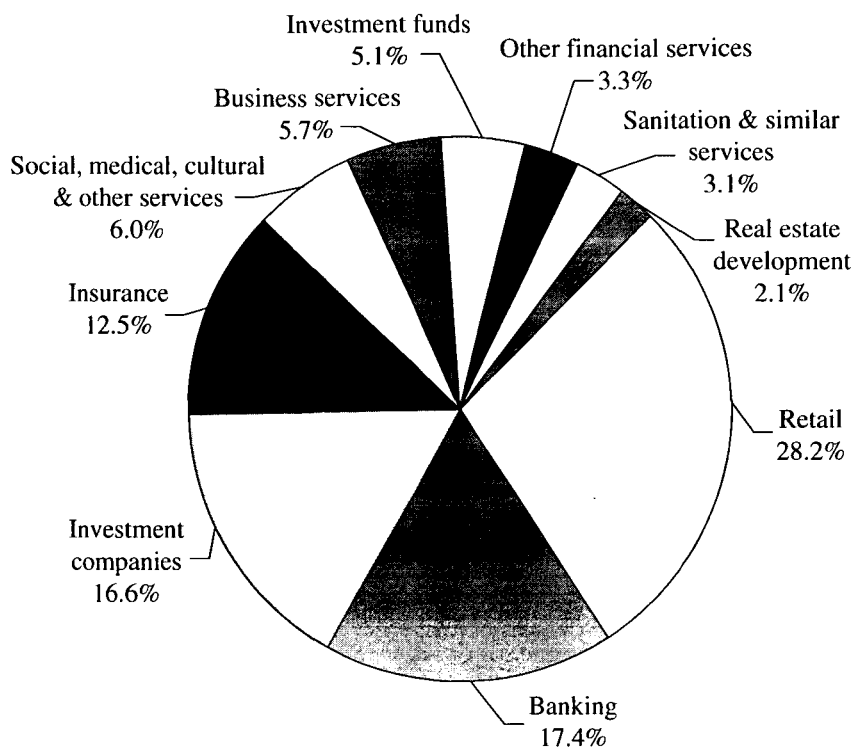


158. See generally United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 7, 1959, 330 U.N.T.S. 38.

159. *Brazil: Economy*, MICHIGAN ST. U., BROAD SCHOOL OF BUS.: GLOBAL EDGE, <http://globaledge.msu.edu/Countries/Brazil/economy> (last visited Apr. 3, 2012).

160. See *World Investment Report 2003: FDI Policies for Development: National and International Perspectives*, UNCTAD (2003).

Between 1974 and 2010, the mining sector accounted for 32.9% of gross FDI materialized through DL 600.¹⁶¹ It was followed by services (22.1%), the electricity, gas, and water industries (19.2%), manufacturing (11.3%), transport and communications (11.2%), construction (1.9%) and agriculture and fishing (1.4%). In the services sector, the most important segments were retail (28.2%), banks (17.4%), investment companies (16.6%) and insurance (12.6%).¹⁶²



Since 1995, the mining sector accounted on average for over half of FDI through DL 600.¹⁶³ The sector's importance showed a gradual decrease to an average of fifteen percent in 1999-2001, but it continued playing a significant role in the sectorial structure of materialized FDI.¹⁶⁴ From 2002 to 2010, it represented an average twenty-eight percent of total FDI through DL 600, mostly in the form of new copper and gold projects.¹⁶⁵ Surprisingly, mining projects received seventy percent of au-

161. *Destination of the FDI*, FOREIGN INVESTMENT COMMITTEE, http://www.foreigninvestment.cl/index.php?option=com_content&view=article&id=134&Itemid=101 (last visited Apr. 3, 2012).

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

thorized foreign investment the year 2011.¹⁶⁶

The relative decrease in the preeminence of mining investments is attributed largely to higher investment in the electricity, gas, and water sectors and in transport and communications.¹⁶⁷ This was mainly the result of the intense competition following deregulation of mobile and long distance telephone services, totaling twenty-four percent of the FDI between 2000 and 2005.¹⁶⁸ Furthermore, an infrastructure concessions program, launched in 1995, opened the way for the participation of private capital—mostly from abroad—in the construction and operation of highways and airports.¹⁶⁹

For the abovementioned reasons, we can conclude that even if the current financial crisis had an impact on macroeconomic adjustment, it has not affected FDI in Chile. In fact, FDI inflows have increased in the last three years. Amid a background of global economic uncertainty, foreign investors have continued to view Chile as a trustworthy option. This could reflect confidence in the Chilean economy, Chilean institutions, and the legal framework for FDI. But it can also be due to the consistently strong mining sector, maintained by high copper prices and FDI investment in utilities, transport, and communications.¹⁷⁰

In addition, as the majority of foreign investment in Chile is FDI and not portfolio, investment flows would not be lowered or removed quickly. We need to remember that under DL 600, capital remittances may be affected only a year after the date such capital has been brought in.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Chile Attracts a Record US\$13.7 Billion in Foreign Investment*, *supra* note 154.

Updates

